

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 232 of 2003

BETWEEN:

CEDRIC SAMUEL

Claimant

v

ALMA JOHNSON

First Defendant

LA FLEUR JOHNSON

Second Defendant

Appearances: Mr. S. Raymond-Cadette for the Claimant
Ms. N. Sylvester and Ms. P. Knights for the Defendants

2007: May 16
2008: January 29
February 27

JUDGMENT

- [1] **THOM, J:** This is a claim for a declaration that the Claimant is the owner of a parcel of land situate at Newton Village in the State of Saint Vincent and the Grenadines.
- [2] The Claimant alleges that he is the owner of the land by virtue of Deed No. 5915 of 2002. The land described in the said Deed was given to him during the 1970's by the owner Ruby Johnson. He built a wooden structure which he used as a workshop on the said land with the permission of Ruby Johnson. He has been in possession of the said property since then to the present time.
- [3] The Defendants deny that the Claimant is the owner of the said land or that the Claimant built a house on the said land. The Defendants contend that the land belonged to the First

Defendant who transferred it by Deed of Gift No. 1118 of 1992 to the Second Defendant. The Defendants in their counterclaim sought inter alia a declaration that Deed No. 1118 of 1992 vests good and proper title in the Second Defendant.

- [4] The Claimant testified on his own behalf and called three (3) witnesses. The First and Second Defendants testified on their own behalf.

CEDRIC SAMUEL

- [5] The evidence of the Claimant is that he lived with Ruby Johnson from the age of three (3) months. In 1970 himself and Ruby Johnson built a house on the land and it was presented to him and he lived in the house from 1970 until presently. Prior to 1970 he lived in the family house on the land with Ruby Johnson and the First Defendant. Around six years ago the First Defendant sought his permission to live in his house since her son had broken down her house to reconstruct it. In the 1970's the wooden house was broken down and another wooden house built in its place. Roy Forbes, George Edwards and one Oliver assisted him to build the house using wood from the first house. He also built a front wall to protect his house with the encouragement of the First Defendant.

GEORGE EDWARDS

- [6] This witness testified that he is seventy-eight years old and resides in Newton. The Claimant lived with Ruby Johnson and Alma Johnson since he was three (3) months old. The Claimant built a workshop where he did work as a tin smith. He also did carpentry and joinery. When Alma Johnson repaired the main house the entire family including the Claimant went to live in a house rented from Sealey. Ruby Johnson gave the Claimant the old house and James Olliver assisted him to construct a house. The Claimant did not live in the house but lived in the main house. The Claimant and Roy Forbes finished the main house by putting in the windows and the doors. The Claimant built the furniture. The Claimant lived for a while in Trinidad and Tobago. He also went to work in Union Island

and when he returned to Saint Vincent he went back to his home. The Claimant built a wall to protect the house.

ARNOLD JACK

[7] This witness testified that he began living in the area around the late 1940's. During the early 1950's he met the Claimant who was living with Ruby Johnson and the First Defendant. The Claimant lived and had a small workshop on the land. The First Defendant lived with Ruby Johnson in the main house. More than twenty (20) years ago the Claimant requested him to assist him to build the wall to protect the house. The First Defendant never stopped him from building the wall. The Claimant would go away for a few months and when he returned he went back to the small house. Ruby Johnson gave permission to one George to build a small house on her land. When George left the house was sold to one Neville for \$12.00 and the Claimant bought it from Neville for \$12.00 and attached it to the workshop and made one building where he lived and worked. The Claimant ate in the main house and slept there sometimes.

GEORGE MYERS

[8] This witness' testimony was the same as that of George Edwards.

ALMA JOHNSON

[9] This witness testified that she lived with Ruby Johnson at Ruby Johnson's home since she was a child. Ruby Johnson had no children. The Claimant also lived with Ruby Johnson as a child. She paid for the Claimant to learn the trade of a tin smith. In 1967 she broke down Ruby Johnson's house which was dilapidated and she built a new house on the land. She continued to live there with Ruby Johnson. From 1961 she paid the taxes for the land in the name of Ruby Johnson and after Ruby Johnson died in 1980 she paid the taxes in her own name. One Cecil Pemberton who had assisted her had no where to live so she built a small house using the boards from Ruby Johnson's house and permitted him to live

in it. At the time of the construction of the house the Claimant was living at his girlfriend's home. She subsequently permitted the Claimant to live in the house. When Ruby Johnson died the Claimant was residing in Trinidad and Tobago. He later went to live in Union Island. When the Claimant visited Saint Vincent he stayed by Clive Herbert and he would visit her. When the Claimant tried to build in 2000 on her land she stopped the surveyor from surveying the land. When the Claimant tried again in 2001 she caused the Planning Division to issue a stop notice to the Claimant.

LA FLEUR JOHNSON

[10] This witness' evidence was essentially the same as the witness Alma Johnson.

ISSUE

[11] The issue to be determined by the Court is whether the Claimant is the owner of the land in which he sought to erect the concrete structure.

[12] Although the Claimant referred to Deed No. 5915 of 2002 in his statement of case the Deed was not exhibited.

[13] Learned Counsel for the Claimant submitted that the said land was given to the Claimant by Ruby Johnson. This was done orally. The Claimant built a house on the said land which he occupied. The Claimant claims ownership of the said land by adverse possession. The Claimant has been in exclusive uninterrupted possession of the land for over twelve years before the commencement of this action in 2003.

[14] Learned Counsel for the Defendants submitted in response that the Claimant did not have exclusive physical control of the land. The Defendants were always in possession of the land and permitted the Claimant to be on the land from time to time. Learned Counsel referred the Court to several cases on the issue of adverse possession including the case of **Hector Caesar Luke et al v Bernard Alexander** Dom. HCV 2001/0161 where Rawlins J (as he then was) in discussing the issue of adverse possession stated:

“... The Court will, prima facie ascribe possession to the paper owner of land or a person who can establish title through the paper owner. The Court can only ascribe possession to a person who does not have paper title if that person has factual possession and animus possidendi, the requisite intention to possess the land. Factual or physical possession means a single and conclusive possession, or exclusive physical control of the land. The acts that constitute a sufficient degree of exclusive physical control will depend upon the circumstances, particularly the nature of the land and the manner in which land of that nature is commonly used and enjoyed. The animus possidendi, has been described as the intention to possess the land to the exclusion of all other persons, including the owner with the paper title, so far as is reasonable and so far as the process of law will allow...”

[15] Adverse possession is dealt with in the Limitation Act Chapter 90. The relevant provisions are Section 17 and Schedule 1.

[16] The effect of the above mentioned provisions is that the right of action to recover the land is barred whenever twelve (12) years have elapsed from the time when a right of action accrued. The right of action is accrued only when the land is in adverse possession of a person other than the true owner. Time begins to run at the time when adverse possession is taken of the land.

[17] In ***Halsbury Laws of England*** Volume 28 paragraph 768 the Learned Author explained adverse possession as follows:

“Meaning and Effect of Adverse Possession.

No right of action to recover land accrues unless the land is in the possession of some person in whose favour the period of limitation can run. Such possession is called adverse possession. What constitutes such possession is a question of fact and degree, there is no general principle that to establish possession of an area of land, the Claimant must show that he made physical use of the whole of it.”

[18] The principles to be applied by the Court in determining whether a person was in adverse possession were outlined in the case of ***Powell v McFarlane***. These principles were approved by the House of Lords in ***J A Pye (Oxford) Ltd and Another v Graham And Another***.

[19] In ***J A Pye*** the court stated at paragraph 866:

“The legal possession required is (i) a sufficient degree of physical custody and control (factual possession) and (ii) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (intention to possess). As regards factual possession, everything depended on the circumstances, but broadly, such possession was constituted where the alleged possessor had been dealing with it, and nobody else had done so. The necessary intent was one to possess, not to own and an intention to exclude the proper owner only so far as was reasonably possible.”

[20] Applying the above principles to this case the question is did the Claimant dispossess the true owner of the said land and if so when did he go into possession? The onus of proving that the owner has been dispossessed is on the party who alleges it. In this case it is the Claimant.

[21] The Claimant’s contention is that he was given the land orally by Ruby Johnson in the 1970’s and he continued to occupy the land exclusively after Ruby Johnson died in 1980 without the permission of any one.

[22] Having reviewed the testimony of all of the witnesses I find that there were no major contradictions in the evidence led by the Claimant or the Defendants. It is not disputed that the house was built with boards from Ruby Johnson’s house which was broken down by Alma Johnson. The Claimant contends that he built the house with the assistance of one Olliver, while the First Defendant contends that the house built by one Cecil Pemberton with her permission. He had assisted her and he had no where to live. The Claimant acknowledged under cross-examination that Cecil Pemberton was living in the building. Also at the time when the main house was being constructed the Claimant was living with his girlfriend Vernice Tucker.

[23] It is also not disputed that when Ruby Johnson died in April 1980 the Claimant was residing in Trinidad and Tobago. The Claimant returned around 1980-1981. The Claimant agrees that he has been working and living in Union Island with his wife for the past nineteen years, that is from 1988. Under re-examination the Claimant testified that whenever he returned to Saint Vincent he stayed at his house. The Defendants deny that he stays at the house but only visits them. He does not stay there. He stays with one

Clive Herbert with whom he had worked as a carpenter. There is no evidence of when the Claimant first returned to Saint Vincent having left nineteen years ago.

[24] On the other hand the evidence of the First Defendant which was not contradicted is that in 1967 she broke down Ruby Johnson's house and she built another house on the land and Ruby Johnson lived with her until Ruby died in April 1980. She continued to live on the land after Ruby Johnson died and treated it as her own paying the taxes in her own name. The First Defendant exhibited several tax receipts in her name after Ruby Johnson's death to the time of the institution of these proceedings. She permitted the Claimant to use the small house. When the Claimant attempted to build on the land in 2000 she objected. The surveyors were prevented from surveying the land. Also when the Claimant attempted to build in 2001 she caused the Planning Division to issue the Claimant a stop notice.

[25] I find that the Claimant has not established on a balance of probabilities that he has been in adverse possession of the land for a period of twelve (12) years before the commencement of his claim.

[26] I find that the Defendants have been in exclusive uninterrupted possession of the land described in Deed No. 1118 of 1992 for a period in excess of twelve (12) years prior to the commencement of this action.

[27] The Claim is dismissed.

[28] It is hereby ordered that:

A Declaration is hereby granted that:

- (1) The First Defendant is entitled to the land described in Deed No. 1118 of 1992.
- (2) The Claimant is hereby restrained whether by himself, his servants and/or agents howsoever otherwise from entering or crossing the said property described in Deed No. 1118 of 1992.

- (3) The Claimant shall pay the Defendants costs in the sum of \$7,000.00 pursuant to Case Management Order dated 23rd July 2004.

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Gertel Thom
HIGH COURT JUDGE